

SENATE NO. 495

AN ACT PROVIDING FOR THE PUBLIC HEALTH BY MANAGING MOSQUITOES IN THE COMMONWEALTH.

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

SECTION 1. Chapter twenty-one A, as appearing in the 1990 Official Edition of the
Massachusetts General Laws, is hereby amended by inserting after paragraph twenty-nine of
section two thereof the following new paragraph:-(30) consistent with the statutory
responsibilities, implement the mosquito management program established pursuant to Chapter
252.

SECTION 2. Chapter two hundred and fifty-two entitled IMPROVEMENT OF
LOWLAND AND SWAMPS is hereby repealed and replaced with the following:

CHAPTER 252. An Act: Providing for the Public Health by Managing Mosquitoes in
the Commonwealth.

Section 1. The term "board" means the mosquito management board created in section
four.

The term "council" means the governing body of the mosquito management districts
created in section seven.

The term "disease vector" means any species of mosquito which contributes to the
amplification or transmission of any disease including Eastern Equine Encephalitis (EEE) or
West Nile Virus (WNV) among human or non-human populations by injection of salivary gland
fluid during biting.

18 The term "district" means the mosquito management district created in section seven.

19 The term "IPM" (Integrated Pest Management) means the selection, integration, and
20 implementation of pest control based on predicted economic, ecological, and epidemiological
21 consequences. IPM seeks maximum use of naturally occurring pest control including weather,
22 disease agents, predators and parasitoids. In addition, IPM utilizes various biological, physical
23 or chemical controls and habitat modification techniques. Artificial controls are imposed only as
24 required to keep a pest from surpassing tolerable population levels predetermined from accurate
25 assessments of the ecological, public health, and economic costs of the control measures.

26 The term "IPM mosquito management plan" means the long term plans developed by the
27 mosquito management board and councils under sections five and eight.

28 The term "nuisance" means mosquitoes which may cause irritation or discomfort to
29 humans, but do not pose and are not expected in the immediately predictable future to pose a
30 significant risk to public health in Massachusetts.

31 The term "pesticide" means a substance or mixture of substances intended for
32 preventing, destroying, repelling, or mitigating any pest, and any substance or mixture of
33 substances intended for use as a plant regulator, defoliant, or desiccant; provided that the term
34 "pesticide" shall not include any article that is a "new animal drug" within the meaning of
35 section 201(w) of the federal food, drug and cosmetic act (21 U.S.C. Section 321 (w)), or that
36 has been determined by the secretary of the United States department of health, education and
37 welfare to be a new animal drug by a regulation establishing conditions of use for the article, or
38 that it is an animal feed within the meaning of section 201(x) of such act (21 U.S.C. Section
39 321(x)).

40 The term "source reduction" means a method of managing mosquitoes that relies on
41 reducing or eliminating the ability of larval habitats to support the development of larvae.

42 Section 2. When it is necessary for the purpose of protecting public health or for other
43 purposes to control or abate mosquitoes, or when it is necessary to control greenhead flies,
44 measures shall be taken as specified in this chapter.

45 Section 3. There is hereby established within the executive office of environmental
46 affairs a mosquito management office which shall be administered by the secretary. The
47 secretary shall appoint all necessary employees within the mosquito management office, except
48 as may be otherwise provided by law.

49 The secretary shall direct the mosquito management office, consistent with state law,
50 and policies and directives of the board, to adopt, and from time to time amend rules,
51 regulations, procedures, standards, guidelines, and policies which shall constitute the
52 Massachusetts mosquito management program.

53 Section 4. There shall be in the mosquito management office a mosquito management
54 board. The function of the board shall be to regulate and oversee all disease vector mosquito and
55 related nuisance organism management activities in the commonwealth; to prepare a state IPM
56 mosquito and greenhead fly management plan; to review and certify IPM mosquito
57 management plans submitted by councils; to create policies and procedures for mosquito
58 management to control vector-borne diseases; to advise the governor when a public health
59 emergency arises due to disease-bearing mosquitoes imminently threatening to public health; to
60 authorize and carry out investigations and keep records; to carry out disease-bearing mosquito
61 management programs when a large area of the state is affected; to develop policies and
62 procedures to insure that all mosquito management activities comply with the intent of chapter

63 131, sections 40 and 40A; chapter 130, section 105; chapter 91, sections 1 through 63; and
64 chapter 40, section 5, as applicable; provided, however, the usual and customary activities
65 associated with the IPM mosquito and greenhead fly management plan, as certified, shall not
66 require filings or hearings under chapter 131, section 40, but rather simple notice to the
67 conservation commission of any community of proposed actions in any regulated wetland; and
68 to carry out all other powers and functions granted to the board by this chapter.

69 The board shall be comprised of eleven members: the secretary of the executive office of
70 administration and finance or a designee; the secretary of the executive office of environmental
71 affairs, or a designee; the commissioner of the department of public health, or a designee; the
72 commissioner of the department of environmental protection or a designee; the commissioner of
73 the department of conservation and recreation or a designee; the commissioner of the
74 department of agricultural resources or a designee; the commissioner of the department of fish
75 and game or a designee; one person representing an established statewide environmental
76 protection organization; one person either an organic farmer, a beekeeper, or a fish farmer; an
77 entomologist; and an engineer with expertise and experience in hydrology and soil
78 conservation; the latter four members to be designated by the governor of the commonwealth
79 and serving conterminously with the governor. The board shall receive no additional
80 compensation for service on the board, but shall be entitled to their reasonable traveling and
81 other expenses incurred in the performance of their duties. The board may draw staff support
82 from the departments represented with the consent of the respective commissioners.

83 The board shall meet at the call of any two members or at the call of the member
84 representing the secretary of environmental affairs who shall serve as the board chair, and the

85 board may elect a secretary and other officers as they find necessary, but not less than
86 bimonthly.

87 The board may purchase, lease, or rent equipment and supplies to be distributed to the
88 regional mosquito control councils to assist in the performance of their duties and to facilitate
89 the integrated pest management of mosquitoes or greenhead flies. Such supplies may be made
90 available to councils by petition to the board, but shall remain the property of the board.

91 Section 5. The board shall prepare a state IPM mosquito and greenhead fly management
92 plan. Any action taken under this chapter, other than emergency actions under the conditions of
93 this section, section 9, and section 15, shall be included in the IPM mosquito management plan.
94 Before adoption of the IPM mosquito management plan, a public hearing shall be held by the
95 board in each of the existing mosquito control districts. In addition to the details of management
96 activities the IPM plan shall include:

97 A. A determination by the Natural Heritage and Endangered Species Program in the
98 department of fish and game that action will result in no alteration, as defined under 131A, to
99 any priority habitat or take of rare, threatened, endangered, or species of special concern state or
100 federally listed species;

101 B. Reasonable measures by the board to assure that the action proposed will result in no
102 runoff of any pesticide to any Ocean Sanctuary under chapter 132A, sections 13 through 16 and
103 18, or specific actions to be taken to minimize detrimental impacts; and

104 C. Reasonable- measures by the board to assure that the proposed action will result in no
105 detrimental effect on soils, sediments, surface waters or groundwater, or specific actions to be
106 taken to minimize detrimental impacts.

107 The board shall complete this state IPM mosquito management plan within six months
108 of the enactment of this act.

109 The board may prescribe or prohibit by regulation: the use of materials, rates of
110 application, methods and timing to be used in the application of any material or agent for the
111 management of mosquitoes where necessary to protect public health or to prevent injury to
112 plants or animals and other environmental resources including pollinating insects, birds, and
113 aquatic life. The board shall provide guidelines for reviewing construction, development, and
114 drainage plans with the goal of avoiding the creation of mosquito-borne disease vector and
115 nuisance mosquito habitats. In issuing guidelines or regulations, the board shall consider
116 pertinent research findings, recommendations and laws or regulations of other agencies of the
117 commonwealth, other states, and of the federal government, pertinent to the best interests of
118 public health and the environment.

119 Before issuing regulations the board shall hold at least three public hearings in different
120 regions of the commonwealth. The board shall see that proper notice is given to the public, local
121 boards of public health, and local conservation commissions, of the time and place of the
122 hearings.

123 Mosquito management programs shall be accompanied by a public education campaign
124 emphasizing appropriate actions that individual citizens can take to reduce their personal risk by
125 avoiding contact with mosquitoes.

126 Within six months of the enactment of this act the board shall complete an updated
127 emergency arbovirus response plan to be exercised by the commissioner of the department of
128 public health under section fifteen, in case of public health emergency or the prediction of an
129 impending emergency based on field evidence. The emergency response plan shall specify IPM

130 measures which are to be utilized and conditions for their use, public notice to be given,
131 procedures for coordination among agencies of state and municipal governments and the
132 districts, and investigations and environmental and human monitoring to be made and records to
133 be kept. They shall be reviewed and revised whenever useful or necessary, but no less
134 frequently than every two years.

135 Following any declaration of an arbovirus public health emergency and within six
136 months after termination of the emergency the board shall complete for the public record a
137 report of actions taken during the emergency, including, at a minimum:

138 A. The target organism(s), their estimated population size(s), records of EEE or other
139 mosquito-borne disease prevalence and infection rate, rainfall and temperature data, and an
140 analysis of the geographic patterns indicated by these data, both prior to and following
141 management activities;

142 B. Agents, chemicals, or source reduction activities used in the treatment, and times,
143 rates and means of application;

144 C. Records of incidence of EEE or other mosquito-borne disease and the effectiveness of
145 the treatment in preventing the disease, the total number of confirmed human cases of EEE or
146 other mosquito-borne disease, the total number of horses and other animals confirmed as having
147 been affected by EEE or other mosquito-borne disease, the number of deaths in humans and
148 other animals, the kinds of illness and disabilities, noting term and nature of sickness,
149 recuperation, and rehabilitation in humans;

150 D. Effects of the treatments on soils and water, and on flora and fauna of the areas
151 treated and other areas affected;

152 E. Maps of the land area treated with indications on the maps of localities treated and
153 flight paths if aerial adulticide treatment is utilized.

154 F. The board will complete comparable IPM and emergency response plans for any
155 mosquito-borne disease it addresses.

156 The report shall make recommendations for changes in regulations or procedures for
157 future interventions.

158 The board, through the secretary of environmental affairs, shall make an annual report
159 which, among other things, shall document and compile figures on the formulations and
160 quantity of pesticides used for any IPM mosquito management program, and which shall
161 describe the intended IPM strategy.

162 Section 6. In carrying out the provisions of this chapter, the board may employ
163 necessary engineers, scientists, assistants, or other agents, who may enter on premises which the
164 board desires to survey or examine. The board may provide technical assistance to any council
165 in the development and implementation of a mosquito management program utilizing IPM.

166 The board shall carry out field investigations and other determinations of the need,
167 method, and procedures for managing mosquitoes as deemed advisable, including all significant
168 potential health and environmental impacts of the proposed management measures. Board
169 members and their agents are hereby authorized to enter or examine at any reasonable time
170 those premises which the board considers necessary to carry out its responsibilities.

171 Section 7. A council shall be established for each district and shall be called the
172 _____ mosquito management council. The council is declared to be the corporate
173 authority of the district and shall exercise all the powers and control all of the affairs and
174 property of the district. Any mosquito management council shall be comprised of at least five

175 members, all of whom must either live or work in the district. The members of the council are to
176 be appointed by the mosquito management board and shall comprise: one person a
177 representative of an environmental protection or conservation organization or a municipal
178 conservation commission; one person, a member of a municipal board of health or a health care
179 provider; one person a representative of the executive office of a municipality; and two citizens
180 at large preferably with some background in engineering and/or law, and/or chemistry, and/or
181 biology, or any other experience or education which would have relevance to mosquito control
182 and management.

183 The mosquito management board shall monitor the operations of the councils and shall
184 require adherence to this act and to the council's certified IPM mosquito management plan.

185 Each district council shall appoint a superintendent who shall be a person of skill and
186 experience or knowledge in the field of mosquito management and who shall be committed to
187 the use of IPM for the purpose of managing mosquitoes and controlling EEE and other
188 mosquito-borne diseases. Existing superintendents, provided they meet these conditions, as well
189 as existing staff and employees, may continue in their present capacity, subject to adherence to
190 the regular conditions of workplace and employment. The district superintendent, with the
191 approval of the council, shall be empowered to hire sufficient staff and employees and purchase
192 materials to fulfill the requirements of the council's certified IPM mosquito management plan.
193 Employees and staff of the council shall not be subject to the provisions of chapter 30, section
194 9A or chapter 31.

195 By fulfilling the provisions of this section and obtaining certification of the board to that
196 effect, the current mosquito control projects known by their identifying names as the Berkshire
197 county mosquito control project, the Bristol county mosquito control project, the Cape Cod

198 mosquito control project, the central Massachusetts mosquito control project, the east Middlesex
199 mosquito control project, the Essex county mosquito control project, the Norfolk county
200 mosquito control project, the Plymouth county mosquito control project, and the Suffolk county
201 mosquito control project may remain in existence along with their funding mechanisms as
202 provided for by their enabling acts, voluntary trusts, or other legal instruments. Commissioners
203 of these projects and their employees may continue in their capacity under their existing terms
204 of appointment, as members of the newly formed council, and may be reappointed as members
205 of the council, provided they meet the criteria for membership established by this section.

206 Any municipality, two or more municipalities, or any county or two or more counties in
207 Massachusetts, may, by obtaining certification of the board, become a mosquito management
208 district. The district shall be titled the _____ mosquito management district.
209 Notice of the formation of a district must be filed with the secretary of state and the board with a
210 description of the proposed boundaries of the district.

211 The superintendent shall keep regular records of all proceedings and financial affairs
212 which shall be open to inspection by the board or by the council at all times; and by the public
213 at reasonable hours. The council shall have ultimate responsibility for the efficient financial and
214 sound environmental management of the district and shall be required, at the discretion of the
215 board, to audit its finances and submit said audit to the board for its review and oversight.

216 The federal government, the commonwealth or its municipalities, or their administrative
217 agencies, not members of a mosquito management district, may request mosquito or greenhead
218 fly management services from the district, which the council may provide at a fee. That fee will,
219 at a minimum, pay the full cost of the mosquito or greenhead fly management services. The

220 recipient of the services shall pay the full fee. Any funds received for this purpose in excess of
221 those required to provide the requested services shall be returned to the purchaser.

222 The cost of district services may be shared by the board if the board deems, and in
223 proportion as the board determines, that the service is in the larger interest of the
224 commonwealth.

225 All amounts for which a municipality may be liable in connection with the above may be
226 contributed by persons or bodies politic benefited by the services in proportion to their
227 respective benefits or otherwise.

228 Mosquito management districts may also conduct greenhead fly programs within their
229 districts. Any mosquito or greenhead fly management activity shall comply with the IPM
230 management plan pursuant to section eight.

231 Section 8. Within ninety days from the formulation of the board's IPM plan, or from the
232 establishment of a district, the council shall develop and submit to the board an IPM mosquito
233 management plan. The district's IPM plan shall be constituted either by adopting the board's
234 IPM mosquito management plan, or the board's plan with modifications. The board shall be
235 allowed thirty days to approve, disapprove or modify the district's plan. If the board disapproves
236 or requires amendment of the plan submitted by the council, the council shall have thirty days to
237 make those amendments and resubmit the plan to the board for certification. The plan is adopted
238 for the district upon certification by the board. Thereafter the plan shall be reviewed, amended if
239 necessary, and submitted for recertification at minimum every three years, or more frequently if
240 the council chooses.

241 With the prior written certification of the board of the district's IPM mosquito
242 management plan, as provided for in this section, the council shall have the power to take all

243 necessary or proper steps for the management of mosquitoes within the district subject to the
244 provisions of sections two and seven above; to purchase supplies and materials and to employ
245 labor, assistants, scientists, or consultants as may be necessary or proper in furtherance of the
246 objectives of the same and generally to do all things, subject to the provisions of section two
247 above, necessary or incident to powers hereby granted and to carry out the objectives specified
248 herein.

249 Any action taken under this chapter shall be included in the IPM mosquito management
250 plan. Before adoption of an IPM mosquito management plan, a public hearing shall be held by
251 the council. A hearing required by a federal, state, or municipal agency on the program will
252 suffice for purposes of this section. In addition to the details of management activities the IPM
253 plan shall include:

254 A. Review under the Massachusetts Endangered Species Act chapter 131A by the
255 Natural Heritage and Endangered Species Program in the department of fisheries and wildlife;

256 B. Reasonable measures by the council to assure that the action proposed will result in
257 no detrimental runoff of any pesticide to any ocean sanctuary under chapter 132A, sections 13
258 through 16 and 18, or specific actions to be taken to minimize detrimental impacts; and

259 C. Reasonable measures by the council to assure that the proposed action will result in
260 no detrimental effect on soils, sediments, surface waters or groundwater, or specific actions to
261 be taken to minimize unavoidable impacts.

262 Section 9. The board and any council shall keep complete records of its activities and
263 their effects on public health and the environment. The board shall promulgate regulations for
264 record- keeping necessary for financial accountability, normal procedural records, records of
265 actions, records of field data or treatment results, and public health records necessary for

266 effective, efficient operations of mosquito management; and provided, further, that any such
267 regulation and the activities which they occasion, shall be paid by the commonwealth of
268 Massachusetts, to the extent that such regulations impose new obligations on existing mosquito
269 districts as of the effective date of passage of this act. This record- keeping shall include at a
270 minimum:

271 A. Identification, record-keeping, and amount of source reduction, or if a chemical or
272 biological pesticide, chemical or agent is used, the times, rates, and means of application;

273 B. Scientific or other evidence obtained or used to implement any IPM mosquito
274 management program, or any evidence contrary to the findings and programs of the board or
275 council.

276 C. Health and environmental benefit/risk assessments for any IPM mosquito
277 management programs of the board;

278 D. Population data on mosquitoes collected before and after carrying out any
279 management program;

280 E. A catalogue with locations indicated on maps of the United States Geological Survey
281 or other maps, whichever is more detailed and accurate, of sensitive areas including but not
282 limited to wetlands; homes; schools; hospitals; rare, endangered or special concern species
283 habitat; open water such as lakes and streams, estuaries and water supplies;

284 F. Procedures for IPM techniques used in any program of mosquito management;

285 G. Procedures for coordination of responsibility among the pesticide bureau, state and
286 local health boards, the state executive office of environmental affairs and department of
287 environmental protection, municipal conservation commissions, the board and council, and
288 other appropriate agencies and organization;

289 H. Records resulting from and reporting the results of investigations of non-target
290 environmental, wildlife, and health effects of any IPM mosquito management program;

291 I. Records keyed to maps specifying locations of areas treated by large-scale aerial
292 application, the date and time of the treatment, identification and amount of any chemical or
293 agent or source reduction activity.

294 The board shall include summaries of this information in an annual report.

295 Application of any pesticide or mosquito management agent shall be made only by
296 licensed applicators as warranted by chapter 132B and regulations promulgated by the
297 department of food and agriculture.

298 Aerial application of adulticide pesticides shall be carried out only in conformity with
299 the state emergency response plan and after a written and published certificate of determination
300 by the board that mosquito populations pose an imminent hazard to public health, stating in the
301 certificate the period of time, not to exceed thirty days in any year, during which aerial
302 application is authorized, the area(s) to be treated, and the specific pesticide or other mosquito
303 management agent to be used. Any aerial adulticide application of pesticides over an area
304 encompassing the whole or portions of more than one mosquito control district shall require an
305 emergency declaration under section 15.

306 Section 10. Any person aggrieved by a determination by the board or any council may
307 request an adjudicatory hearing before the board under the provisions of chapter 30A. The
308 determination shall contain a notice of right to request a hearing and may specify a time limit,
309 not to exceed twenty-one days, within which persons may request a hearing before the board
310 under the provisions of chapter 30A. If no such request is timely made, the determination shall
311 be deemed assented. If a timely request is received, the board shall within a reasonable time

312 hold a hearing and comply with the provisions of chapter 30A. In hearing so held the board
313 shall designate a hearing officer to preside over the hearing, to assemble an official record
314 thereof, and to render a tentative decision as provided in paragraph (7) of section 11 of chapter
315 30A. The board shall make the final decision on the basis of the official record and tentative
316 decision so rendered.

317 If in making a determination which may be the subject of an adjudicatory hearing the
318 board finds that an imminent hazard or an unreasonable adverse effect on the environment could
319 result pending the conclusion of adjudicatory hearing, the board may order that the
320 determination shall become provisionally effective and enforceable immediately upon issuance,
321 and shall remain so notwithstanding and until the conclusion of any adjudicatory hearing
322 procedures timely requested. In the event that the department has thus made a determination
323 provisionally effective, it may later, at its discretion, shorten the duration of or waive the order.

324 As part of a final decision in an adjudicatory proceeding held under the provisions of
325 this section, the board may specify a reasonable time period within which the matter may be
326 barred from further proceedings before the board. In the event that the board has specified a
327 time period, the board may later, at its discretion, shorten or waive such period.

328 A person aggrieved by a final adjudicatory determination of the board may obtain
329 judicial review thereof pursuant to the provisions of chapter 30A.

330 Section 11. Whenever any municipality shall commence any activity set forth in sections
331 six and seven without first having obtained the written consent of the state board, or violates any
332 rule or regulation of the board, the board shall have the power by written notice to order the
333 violator to cease and desist immediately. If the violator does not conform to the board's order,
334 the board may bring prosecution by complaint and warrant, and prosecution shall be made in the

335 district court of the state. The board, without being required to enter into any recognizance or to
336 give surety for cost, may institute proceedings in the name of the state. It shall be the duty of the
337 attorney general to conduct the prosecution of the proceedings brought by the board. The board
338 may obtain relief in equity or by prerogative writ whenever that shall be necessary for the
339 proper performance of those duties.

340 Section 12. Any municipality or subdivision thereof, lying adjacent and contiguous to a
341 district, and not a part of another district, may, if willing, be annexed by appropriate action to
342 that district upon the proper action by the council.

343 Section 13. Any district organized under the provisions of this act, may be dissolved and
344 discontinued by appropriate action of either the state board or the council, or as provided in their
345 governing enabling act, voluntary trust, or other legal instrument. Notice of dissolution shall be
346 filed with the secretary of state and the state board.

347 Section 14. Any municipality or subdivision thereof which lies within a district may be
348 disconnected in accordance with their separate governing enabling act, voluntary trust, or other
349 legal instrument, by the decision of its town meeting, city council, selectmen, or other
350 governing body, from the district upon petition by the municipality or subdivision and action by
351 the council.

352 Section 15. Emergency powers shall be exercised only after a public health emergency is
353 declared by the governor of the commonwealth on the recommendation of the commissioner of
354 the department of public health, or on the recommendation of the board, accompanied by a
355 document detailing the evidence or the basis for the professional judgment that a public health
356 emergency exists, the target organism, the expected management agents or chemicals and
357 procedures to be used, and the land areas to be so treated. Nothing in this act shall prevent the

358 commissioner of the department of public health in an extreme emergency to the public health
359 from exercising powers provided in sections two through nine inclusive. The state of public
360 health emergency shall be terminated by a declaration by the governor of the commonwealth.

361 Section 16. All meetings of the board or councils shall comply with the provisions of the
362 open meeting laws under the administrative procedure act, chapter 30A, section 11A and one-
363 half. All regular board or council meetings shall be open to the public and all resolutions,
364 actions and records of its proceedings shall be open to public view.

365 Section 17. Any increase in cost for the control and management of mosquitoes and
366 greenhead flies resulting from the promulgation of this act shall be directly appropriated by the
367 commonwealth of Massachusetts.

368 Section 18. The board shall provide a report to the house and senate committees on ways
369 and means and the joint subcommittee on natural resources and agriculture by April first
370 detailing all encumbrances, expenditures and projected expenditures of funds and providing
371 projections for needs and associated costs for the next fiscal year.

372 Section 19. This act shall take effect upon passage.